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12 **UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA**

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15 PACIFIC COAST FEDERATION OF  
FISHERMEN'S ASSOCIATIONS, *et al.*,

16 Plaintiffs,

17 v.

18 GINA RAIMONDO, in her official  
capacity as Secretary of Commerce, *et al.*,

19 Defendants.

20 Case No. 1:20-cv-00431-DAD-EPG

21 **PLAINTIFFS' RESPONSE TO  
SACRAMENTO RIVER INTERVENORS'  
OBJECTIONS TO EVIDENCE CITED IN  
PLAINTIFFS' OPPOSITION TO  
FEDERAL DEFENDANTS' MOTION FOR  
VOLUNTARY REMAND WITHOUT  
VACATUR AND PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION FOR  
2022 (DKT. 327)**

22 Hearing date: February 11, 2022  
23 Judge: Hon. Dale A. Drozd

24 Courtroom 5, 7th Floor  
2500 Tulare Street  
Fresno, California 93721

1           The two evidentiary objections filed by Intervenor-Defendants Reclamation District No.  
2 108, *et al.*, and Glenn Colusa Irrigation District, *et al.* (the “SRS Contractors”), and the Tehama-  
3 Colusa Canal Authority (collectively, the “Sacramento River Intervenors” or “SR Intervenors”),  
4 with respect to the expert declaration of Dr. Jonathan A. Rosenfield, Dkt. 327, are without merit  
5 and should be overruled.

6           Dr. Rosenfield’s supplemental expert declaration submitted in support of Plaintiffs’ motion  
7 for a preliminary injunction for 2022, Dkt. 325 (“Supp. Rosenfield Decl.”), is clearly admissible  
8 and directly relevant to the questions of what irreparable harm is likely to befall the endangered  
9 and threatened species of fish at issue in the case before a full resolution of the merits of Plaintiffs’  
10 claims is possible. Remarkably, SR Intervenors continue to object to Dr. Rosenfield’s  
11 consideration of NMFS’ 2017 draft Shasta RPA Amendment. Dkt. 327 at 5. However, the 2017  
12 draft Shasta RPA Amendment is part of the administrative record in this case, *see* Dkt. 308; Dkt.  
13 306-1, and is admissible as the admission of a party opponent, Fed. R. Evid. 801(d)(2)(D).

14           Further, SR Intervenors’ suggestion that Dr. Rosenfield, as an expert with vast experience  
15 studying the effects of Water Project operations on fish populations, cannot consider public  
16 documents regarding Water Project operations in forming his opinion, is wholly without merit.  
17 Dr. Rosenfield certainly qualifies as an expert with specialized knowledge of these imperiled fish  
18 species and the effects of Water Project operations on the fish populations. *See* Dkt. 82, ¶¶2–5,  
19 Exh. A; Fed. R. Evid. 701, 702. Moreover, even if SR Intervenors could make out a valid concern  
20 with respect to Dr. Rosenfield’s expertise (they cannot), such objections go to the weight accorded  
21 to Dr. Rosenfield’s testimony, rather than to admissibility. *See S. Yuba River Citizens League v.*  
22 *Nat'l Marine Fisheries Serv.*, 257 F.R.D. 607, 616 (E.D. Cal. 2009).

23           In addition to their narrative objections, SR Intervenors make objections to individual  
24 paragraphs of Dr. Rosenfield’s declaration. Those objections should be overruled for the  
25 following reasons.

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Material Objected To	Grounds for Objection (as stated by SR Intervenors)	Plaintiffs' Response to Objection	Ruling
Supp. Rosenfield Decl. ¶¶33, 41–42	<p>FRE 701, 702.</p> <p>Dr. Rosenfield is a biologist. Rosenfield Decl. ¶ 1. He does not demonstrate any qualification to opine on the accuracy and sufficiency of temperature models or the interpretation of model results and their application to water resource management.</p> <p>Nevertheless, Dr. Rosenfield specifically opines on temperature modeling, concluding that temperature modeling performed in 2021 by NMFS “clearly demonstrated that releasing more water during the spring and summer led to higher river temperatures, higher winter-run TDM, and lower end-of September storage.”</p> <p>FRE 702 requires “scientific, technical, or other specialized knowledge” to opine on such matters. This would include, for example, experience or education in hydrology, hydraulics, water temperatures, and water resources planning and management. Because Dr. Rosenfield does not demonstrate any level of experience or education in this subject matter, he is not qualified to offer opinions on temperature modeling. Therefore, these objections should be sustained and these opinions should be</p>	<p>SR Intervenors object to three paragraphs of Dr. Rosenfield’s declaration and assert that he should not be permitted to rely on Federal Defendants’ modeling and should not be allowed to explain that this modeling indicates that “releasing more water during the spring and summer” would result in higher in-stream temperatures and higher temperature-dependent mortality of winter-run Chinook salmon. SR Intervenors fail to identify any technical expertise that would be necessary for Dr. Rosenfield to consider and describe the temperature modeling.</p> <p>First, ¶33 does not rely on or refer to any technical knowledge of the accuracy of Reclamation’s temperature modeling. Rather, the objected-to paragraph reflects Dr. Rosenfield’s opinion regarding the effects of specific water temperatures on survival of salmon, an issue on which he is fully qualified to opine.</p> <p>Dr. Rosenfield has more than 20 years of experience analyzing the effects of Central Valley Project and State Water Project operations on salmon, including water temperature effects from reservoir operations. Dkt. 82 ¶¶2–5. This includes experience regarding Reclamation’s failure to adequately model and manage water temperatures at Shasta Dam, <i>see</i> Supp. Rosenfield Decl. ¶41, which does not require a degree in hydrology or hydraulics.</p>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

		disregarded.	
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	<p>clarifying: “However, here the court is simply considering the document as part of the consultation history and context, not for the truth of the matters addressed therein.” Dkt. 203, at 8 n.5 in relation to PCFFA Dkt. 85-8 (the 2017 draft Shasta RPA). The Sacramento River Intervenors have since reiterated this objection in response to PCFFA Plaintiffs’ continued reliance on the objectionable material. <i>See</i> Dkt. 282, at 6-7.</p>	<p>is included in the administrative record in this case, Dkt. 308; Dkt. 306-1, and it is admissible evidence, including as an admission of a party opponent, Fed. R. Evid. 801(d)(2)(D). Moreover, it is a final, public document and experts are permitted to rely on government documents. (Indeed, experts may rely on documents that are not admissible. <i>See</i> Fed. R. Evid. 703).</p> <p>Finally, the suggestion that Dr. Rosenfield should not have considered NMFS’s analysis because it was not peer-reviewed is mistaken. An expert in Dr. Rosenfield’s field would reasonably rely on the draft RPA that NMFS finalized and publicly transmitted to Reclamation. Fed. R. Evid. 703.</p>	
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Respectfully submitted,

/s/ Barbara J. Chisholm

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Dated: January 24, 2022

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PLS.’ RESPONSE TO SAC. RIVER INTERVENORS’ OBJECTIONS TO EVIDENCE

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3       *Fishermen's Associations and Institute for Fisheries*  
4       *Resources*  
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## PROOF OF SERVICE

CASE: *Pacific Coast Federation of Fishermen's Associations, et al. v. Raimondo, et al.*

CASE NO: U.S. Dist. Ct., E.D. Cal., Case No. 1:20-cv-00431-DAD-EPG

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. I hereby certify that on January 24, 2022, I electronically filed the following with the Clerk of the Court for the United States District Court for the Eastern District by using the CM/ECF system:

**PLAINTIFFS' RESPONSE TO SACRAMENTO RIVER INTERVENORS'  
OBJECTIONS TO EVIDENCE**

All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of January, 2022, at Berkeley, California.

/s/ Barbara J. Chisholm  
Barbara J. Chisholm